

DENNIS RICE and HAROLD MACARIOLA,
individually and on behalf of all others similarly
situated,

Consolidated
Plaintiffs,

v.

DOLLAR THRIFTY AUTOMOTIVE GROUP,
INC., THOMAS P. CAPO, MARY ANN N.
KELLER, EDWARD C. LUMLEY, RICHARD
W. NEU, JOHN C. POPE, SCOTT L.
THOMPSON, HDTMS, INC. and HERTZ
GLOBAL HOLDINGS, INC.,

Defendants.

Case No. 10-CV-0294-CVE-FHM
BASE FILE

Consolidated with
Case No. 10-CV-0311-CVE-FHM

I, Jack C. Moore, declare, under penalty of perjury, the following:

2. Attached hereto as Exhibit A is a true and correct copy of the *In re Zenith Nat'l Ins. Corp. S'holders' Litig.*, Del. Ch., No. 5296-VCL, March 19, 2010, hearing transcript of the “Telephonic Oral Argument On Plaintiffs’ Motion For Expedited Proceedings and Rulings of the Court.”

I hereby declare under penalty of perjury that the foregoing is true and correct this 5th day of August, 2010.

s/ Jack C. Moore
JACK C. MOORE

4832-6568-8839, v. 1

EXHIBIT A

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: ZENITH NATIONAL INSURANCE CORP.: Consolidated
SHAREHOLDERS LITIGATION : Civil Action
: No. 5296-VCL

- - -

Chancery Court Chambers
New Castle County Courthouse
500 North King Street
Wilmington, Delaware
Friday, March 19, 2010
12:03 p.m.

- - -

BEFORE: HON. J. TRAVIS LASTER, Vice Chancellor.

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TELEPHONIC ORAL ARGUMENT ON PLAINTIFFS' MOTION FOR
EXPEDITED PROCEEDINGS and RULINGS OF THE COURT

- - -

CHANCERY COURT REPORTERS
New Castle County Courthouse
500 North King Street - Suite 11400
Wilmington, Delaware 19801
(302) 255-0524

1 APPEARANCES: (via speakerphone)

2 CARMELLA P. KEENER, ESQ.
3 P. BRADFORD deLEEuw, ESQ.
4 Rosenthal, Monhait & Goddess, P.A.

-and-

5 JAMES S. NOTIS, ESQ.
6 of the New Jersey Bar
7 Gardy & Notis, LLP

-and-

8 DAVID H. LEVENTHAL, ESQ.
9 of the New York Bar
10 Faruqi & Faruqi, LLP

-and-

11 LESTER R. HOOKER, ESQ.
12 of the Florida Bar
13 Saxena White P.A.
14 for Plaintiffs

15 ALLEN M. TERRELL, JR., ESQ.
16 ETHAN A. SHANER, ESQ.
17 Richards, Layton & Finger, P.A.

-and-

18 ROBERT C. MYERS, ESQ.
19 JOHN E. SCHREIBER, ESQ.
20 JAMES P. SMITH III, ESQ.
21 of the New York Bar
22 Dewey LeBoeuf LLP
23 for Defendants Zenith National Insurance Corp.,
24 Stanley R. Zax, Jerome L. Coben, Max M.
Kampelman, Robert J. Miller, Fabian Nunez,
Catherine B. Reynolds, Alan I. Rothenberg,
William S. Sessions, and Michael W. Zavis

18 WILLIAM M. LAFFERTY, ESQ.
19 BRADLEY D. SORRELS, ESQ.
20 Morris, Nichols, Arsht & Tunnell LLP

-and-

21 ALAN S. GOUDISS, ESQ.
22 of the New York Bar
23 Shearman & Sterling LLP
24 for Defendants Fairfax Financial Holdings
Limited and Fairfax Investments II USA Corp.

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1 THE COURT: That is Travis Laster
2 speaking.

3 MS. KEENER: Good afternoon, Your
4 Honor. This is Carmella Keener. And there are a
5 number of other attorneys on the phone. Would Your
6 Honor like a roll call?

7 THE COURT: Yes, please.

8 MS. KEENER: On behalf of plaintiffs,
9 Carmella Keener of Rosenthal, Monhait & Goddess, and
10 my colleague, P. Bradford deLeeuw. My cocounsel are
11 also on the line, James Notis of Gardy & Notis; David
12 Leventhal of Faruqi & Faruqi; and Lester Hooker of
13 Saxena White.

14 THE COURT: Who's going to be speaking
15 for your side this morning?

16 MS. KEENER: Your Honor, both
17 Mr. Notis and Mr. Leventhal has been admitted pro hac
18 vice. And depending on what Your Honor's inquiries
19 are, either one of them may -- will be available to
20 respond.

21 THE COURT: Thank you.

22 Who else do we have?

23 MR. TERRELL: Your Honor, for Zenith,
24 this is Allen Terrell and Ethan Shaner of Richards,

1 Layton & Finger. And I have my cocounsel with Dewey
2 LeBoeuf, Bob Myers, John Schreiber, and Jim Smith. I
3 will be speaking on behalf of Zenith, Your Honor.

4 THE COURT: Thank you.

5 MR. LAFFERTY: And, Your Honor, this
6 is Bill Lafferty of Morris Nichols. I represent the
7 Fairfax entities. And my colleague, Brad Sorrels is
8 in my office; and my cocounsel, Allen Goudiss from
9 Shearman & Sterling in New York is also on the line.

10 THE COURT: Great. Well, with that,
11 then, since we're here on plaintiffs' motion to
12 expedite, why don't the plaintiffs kick off.

13 MR. LEVENTHAL: Good morning, Your
14 Honor. David Leventhal -- or good afternoon. David
15 Leventhal for the plaintiffs.

16 After reading the preliminary proxy,
17 plaintiffs have various concerns regarding process and
18 disclosures. Specifically regarding process, it
19 appears to us that Mr. Zax, CEO and chairman of the
20 board, made the deal a fait accompli. He completely
21 negotiated the deal with Fairfax, which was then
22 essentially rubber-stamped by the -- the outside --
23 excuse me; the independent directors.

24 We have concerns in this case.

1 Mr. Zax was advised by -- by Bank America, Merrill
2 Lynch, who has had, as disclosed, substantial -- we're
3 advised over the past two years -- excuse me; had been
4 advising Fairfax over the past two years in a -- in a
5 number of significant transactions, one transaction
6 closing about three months before, involving Fairfax's
7 acquisition of the Odyssey company. I believe that
8 was a billion-dollar transaction.

9 One of the disclosure points that
10 plaintiffs are seeking is a disclosure of the exact
11 fees that Merrill Lynch had been billed by Fairfax, to
12 get a better sense of the nature of that conflict.

13 Looking at the -- the proxy, there's a
14 glaring hole in that the -- the proxy fails to
15 disclose the projections that Merrill Lynch used in
16 conducting its discounted dividend analysis. In a
17 unique situation here, over 99 percent of the public
18 float of this company is held by institutional
19 investors and mutual funds. And these are the very
20 type of investors who would be very interested in
21 seeing those projections and doing their own
22 discounted dividend analysis.

23 The -- the analysis done by Merrill
24 Lynch and disclosed in the proxy is very brief. It's

1 barely three and a half pages. And, clearly,
2 investors are not being able to -- given enough
3 information to adequately understand their rights,
4 whether to vote in favor of the transaction or to seek
5 appraisal.

6 Additionally, another disclosure --
7 and I would just note that we did not seek to give
8 Your Honor a laundry list of disclosures. We picked
9 the core disclosures that we think shareholders need
10 to know to make informed decisions.

11 Merrill Lynch did disclose that they
12 did analysis based on implied equity value based on
13 observed multiples of share price, and they said they
14 did this based on 2010 and 2011 earnings per share of
15 comparable companies; yet they only disclose the
16 results of that analysis for 2010. And it's
17 interesting, if you read the proxy and you see the
18 results of that analysis, it derives an implied equity
19 value of \$2.69 to \$9.16, which is a far cry of the
20 \$38.

21 So it all sounds well and good, but
22 shareholders would like to see how that analysis
23 resulted for 2011. And based on disclosed 2011
24 earnings per share, which are a lot different than

1 2010, shareholders -- or plaintiffs believe the
2 results would be a lot different and we believe that
3 that should be disclosed.

4 Another disclosure point is that the
5 board was told by Merrill Lynch that it was unlikely
6 that an all-cash bidder would come forward on a basis
7 higher than Fairfax's bid. And in Fairfax's letter
8 brief to you this morning, Your Honor, they were
9 saying, "Well, we can't disclose what isn't there."

10 But, clearly, if I was a diligent
11 board member and my financial advisor were to tell me
12 that there's no -- you know, not likely that an
13 all-cash bidder is going to come forward with more
14 cash, I'd want to know why. So presumably that advice
15 was given and that advice should be disclosed,
16 especially given the conflict with Fairfax's previous
17 history with Bank America, Merrill Lynch. The
18 shareholders need to know exactly the basis for
19 Merrill Lynch's opinion on that matter.

20 And -- and then I previously mentioned
21 the issue of fees. So those are the disclosure
22 points. And the -- the burden for defendants -- we're
23 seeking very limited discovery. We previously have
24 proffered some discovery requests. We would likely

1 seek three depositions as well. Given the harm if the
2 transaction goes forward without adequate disclosure,
3 we can't unscramble the egg. And --

4 THE COURT: Who do you think the three
5 depositions are going to be?

6 MR. LEVENTHAL: We would like to
7 depose Mr. Zax, an advisor from Merrill, and someone
8 from the independent committee.

9 THE COURT: Why don't you think you
10 need to depose the other guy, the CEO of the acquirer
11 who was the other person in the face-to-face meeting
12 with Zax during which he supposedly diverted merger
13 consideration and bargained for his own benefit?

14 MR. LEVENTHAL: Well, we would like to
15 see -- I mean, we're trying to keep it targeted, and
16 we want to know the basis for information that the
17 board reached their decision in exercising their
18 fiduciary duties.

19 THE COURT: All right. You might want
20 to think about taking the CEO of the acquirer.

21 MR. LEVENTHAL: Well, we would
22 certainly be happy to, Your Honor, if Your Honor was
23 so inclined to grant us that relief.

24 (Pause in the proceedings)

1 THE COURT: Still your nickel.

2 MR. LEVENTHAL: Still my nickel.

3 Well, unless you have further questions or unless my
4 cocounsel would like to chime in, I'm good for now.

5 THE COURT: All right. Thank you very
6 much.

7 MR. LEVENTHAL: Thank you, Your Honor.

8 THE COURT: Mr. Terrell.

9 MR. TERRELL: Yes. Thank you.

10 Your Honor, you have our letter
11 stating the reasons we oppose the motion to expedite.
12 And you're quite familiar with the standard. And --
13 and there's no need for us to definitively argue the
14 strength and weaknesses of the points.

15 I would like to just in summary form
16 emphasize to the Court that the plaintiffs have
17 brought an extremely weak case; that, here, the
18 evidence shows arm's-length negotiations between
19 adverse parties, as it were, that resulted in a
20 back-and-forth, getting to \$38 a share, which results
21 in a approximately 35 percent premium.

22 The terms in the merger agreement are
23 not at all out of line with Delaware standards.

24 There's a 2.75 percent termination fee, there's a

1 fiduciary out, and so forth.

2 The deal was announced approximately
3 30 days ago. So consistent, as it turns out, with
4 Merrill's view that a competitive bid was not likely
5 to arise, there has been no other bidder or indication
6 of interest.

7 Likewise, Your Honor, we feel the
8 disclosure claims are extremely weak. And consistent
9 with Delaware law, there is not an absolute
10 requirement that projections were apparently prepared
11 solely for the purpose of the banker to run a DCF
12 analysis. And such projections were not done for any
13 other purpose, it appears. And the work of the banker
14 was fully disclosed in this preliminary proxy that the
15 plaintiffs have. It's about a three-page discussion
16 of the work by Merrill Lynch.

17 And I think that covers, frankly, all
18 the disclosure arguments that the plaintiff has
19 brought to Your Honor's attention. Namely, it goes to
20 the process by which the banker evaluated it, the
21 banker's past experience with Fairfax. And while it
22 doesn't go into the extent of the minutia that the
23 plaintiffs apparently seek, we believe that Delaware
24 law doesn't require that.

1 And furthermore, in any event -- and
2 I'll just finish on the point about timing. In any
3 event, the final proxy has not yet gone out. The --
4 the company has announced that it intends to hold the
5 shareholders' vote on April 29. And with that in
6 mind, it expects to mail the final proxy at the end of
7 this month or by the end of this month. And we'll see
8 in the final proxy whether, in fact, any of these
9 claims with regard to disclosure are still at all
10 before the Court.

11 In essence, I think, Your Honor, we
12 have here a case where the plaintiff doesn't have
13 enough to bring at this stage expedition. And there
14 certainly would be time next month, if after getting
15 the final proxy there seems to be anything different
16 that would allow the plaintiff to ask for expedition.

17 Thank you, Your Honor.

18 THE COURT: Thank you, Mr. Terrell.
19 It's very helpful.

20 Mr. Lafferty?

21 MR. LAFFERTY: Your Honor, I don't
22 believe I have anything else to add. I think we join
23 in -- in -- in the Zenith defendants' opposition for
24 all the reasons that Mr. Terrell stated.

1 THE COURT: Great. Well, I appreciate
2 all the parties getting on the line promptly to deal
3 with the plaintiffs' application.

4 I'm going to grant the motion and
5 schedule a preliminary injunction hearing for April
6 22nd, which is one week in front of the voting date.

7 Having looked at the complaint and
8 reviewed the preliminary proxy, first I'll note that I
9 don't think the fact it's a preliminary proxy makes it
10 premature. I think we have a bad habit -- we
11 sometimes have lapsed into a bad habit of getting
12 plaintiffs both going and coming, where if they sue
13 early on the preliminary, the defendants get to say
14 it's premature; and then if they wait for the
15 definitive, the defendants get to say that -- laches
16 and there's not enough time is left and, therefore,
17 the case shouldn't go forward.

18 I don't have any problem with letting
19 people sue on a preliminary. The company ought to be
20 doing its best effort in the preliminary to address
21 all the disclosure issues, you know, not just sort of
22 putting something out and then fixing everything in
23 the definitive.

24 I understand there's an SEC comment

1 process; and, you know, there can be fights on down
2 the road as to whether disclosures were resulting from
3 SEC comment or whether the plaintiffs had a role in
4 them. But I don't view the fact that we're only at
5 the preliminary proxy stage as any bar to scheduling.
6 In fact, I think that getting started now, when
7 we're -- we essentially have 30 days to get this done,
8 is the right way to go.

9 I do think that there are both
10 substantive claims and disclosure claims here that
11 need to be explored. This is a situation where, at
12 least according to the complaint and the background of
13 the merger, you had a CEO that was way out in front.
14 You had a CEO that, I'm told in the opposition,
15 communicated verbally with his directors early on; but
16 at least according to the background of the merger,
17 the board seems to have been brought in late and in a
18 limited fashion.

19 There are allegations that during the
20 initial meetings the CEO bargained for price,
21 bargained for his own position in the follow-on
22 entity, and also bargained for the ability to
23 compensate and determine the compensation of senior
24 management. That raises a colorable claim as to

1 whether the CEO, in fact, was engaged in steering; in
2 other words, steering for this bidder as opposed to
3 other bidders who might not give him the same freedom,
4 and whether the bidder -- whether the CEO was
5 potentially diverting merger consideration in the form
6 of value to himself and his team rather than value for
7 the stockholders.

8 It may well be that there is no basis
9 at all for those concerns. It may well be that this
10 CEO was, in fact, acting properly as a fiduciary,
11 bargaining appropriately at arm's length and that
12 there was nothing untoward about this process and that
13 it was appropriately handled. But those are not
14 things to be determined today. And given the fact
15 that the CEO and his board chose to put themselves in
16 a position where the CEO got way out in front and it
17 was in essentially compromising meetings or
18 compromising meetings, which is essentially the type
19 of situation that merits exploration on a preliminary
20 injunction record.

21 Given the fact that Lyondell is out
22 there, the suggestion that the defendants have
23 offered, that a postclosing damages action is somehow
24 viable is not something that I find at all colorable.

1 In terms of the disclosure issues, I
2 do think that these plaintiffs have done a good job in
3 terms of identifying specific and targeted issues.
4 You know, as -- as in Lear, it may be that the CEO
5 negotiation question turns into a disclosure claim.
6 We will see. Certainly I think that the lack of
7 projections is something that needs to be explored.

8 You know, nobody -- nobody cited the
9 Pure Resources-Netsmart view of projections, which is
10 certainly far closer to my own. And I think that in
11 both CheckFree and Globis there were other extenuating
12 circumstances that were in play, such that those cases
13 should not be read as broadly as perhaps they are.

14 I also do have concerns about the
15 disclosure of the financial advisor's conflicts,
16 particularly in a situation where the board let its
17 CEO get out in front and is essentially relying for
18 process issues on what the CEO did and then a banker
19 coming in to bless everything with a fairness opinion.
20 I think in that type of situation -- again, there may
21 be nothing untoward about this at all. It may well be
22 that this is a -- a -- a great deal in which all the
23 fiduciaries acted completely appropriately. But at
24 least at this stage of the proceeding, these things

1 need to be explored.

2 On other matters, though, I would
3 encourage the plaintiffs to be far more restrained and
4 to really consider whether they need to address these
5 matters. I'm not going to limit their ability to
6 pursue discovery on them; but I agree with Mr. Terrell
7 that the deal protection features, the no-shop, the
8 termination fee, none of those things look to me to be
9 anything untoward.

10 So but for these other factors
11 involved in the factual scenario, there's nothing
12 about the merger agreement or the terms that jump out
13 at me. So the plaintiffs should think hard about
14 whether that aspect of their complaint is something
15 that they really want to press.

16 The other thing that I would suggest
17 to the plaintiffs is that this is something where I
18 think that the -- the record needs to be explored.
19 And particularly when you're dealing with meetings at
20 which there were two main participants, I don't think
21 the idea that you only depose one of those
22 participants is a good way to proceed.

23 And I would also very much encourage
24 Ms. Keener and her firm to have a meaningful role in

1 this case. I think part of the recent unpleasantness
2 in another case was due to the fact that I don't think
3 that Delaware counsel was sufficiently involved in the
4 process. And I know that you are appearing as
5 Delaware liaison counsel in this matter. I don't
6 think that term diminishes in any way your role as the
7 Delaware lawyer on the case. And I know that all the
8 members at your firm, you know, know how these things
9 are litigated and should be litigated. So, as I say,
10 I would very much encourage you to take a meaningful
11 role in terms of this proceeding.

12 The only other thing I would say is, I
13 want the last brief two days before. So let's say 4
14 o'clock on the 20th. You all can work back from
15 there. But I don't want people jamming the plaintiffs
16 and saying that their brief is due the day after the
17 last deposition. People need to work equitably to
18 work out a briefing schedule that's fair to both
19 sides. You're both going to start briefing this thing
20 as soon as we get off the phone. And so the time
21 should be divided appropriately. And if anybody has
22 any difficulties with scheduling or working something
23 out that's fair to both sides, you certainly know
24 where to find me. And for an expedited matter like

1 this that is going forward on a -- on a one-month
2 schedule, you go to the top of my queue.

3 So does anybody on the phone have any
4 questions about how this matter should go forward?

5 MR. TERRELL: Your Honor, it's Allen
6 Terrell. I don't have any questions in light of
7 everything that Your Honor has so helpfully explained
8 to us. I do have a question as to what you would
9 prefer with regard to a form of order. I think some
10 of the points that you made with respect to the
11 scheduling and obviously the brief and the hearing
12 date, we could put in a form of order. Would you like
13 that, with other dates agreed to, such as the opening
14 and answering brief?

15 THE COURT: Absolutely. I think it
16 would be ideal if you and your counterparts could do
17 your usual good job in terms of working out a
18 scheduling order that sets an appropriate timetable
19 for the action.

20 MR. TERRELL: We will work on that,
21 Your Honor, and should be able to present it to you in
22 a matter of a few days.

23 THE COURT: Wonderful. All right.
24 Well, again, I thank everyone for getting on the phone

1 this morning on short notice. I know that you've got
2 a lot of work ahead of you. But please have a good
3 rest of the day.

4 ALL COUNSEL: Thank you, Your Honor.

5 (The proceedings concluded at 12:25
6 p.m.)

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CERTIFICATE

I, NEITH D. ECKER, Official Court Reporter for the Court of Chancery of the State of Delaware, do hereby certify that the foregoing pages numbered 3 through 19 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Vice Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 22nd day of March 2010.

/s/ Neith D. Ecker

Official Court Reporter
of the Chancery Court
State of Delaware

Certificate Number: 113-PS
Expiration: Permanent